

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 1997-239-C**

In Re:	)	
Proceeding to Establish Guidelines for an	)	<b>RESPONSE TO MOTION OF</b>
Intrastate Universal Service Fund (USF)	)	<b>SCCTA, COMPSOUTH, TW</b>
	)	<b>TELECOM OF SOUTH</b>
	)	<b>CAROLINA LLC, AND NUVOX</b>
	)	<b>COMMUNICATIONS INC.</b>
	)	<b>REQUESTING REVIEW OF USF</b>
	)	<b>ISSUES</b>

Pursuant to 26 S.C. Ann. Regs. 103-829 (Supp. 2007), the South Carolina Office of Regulatory Staff (“ORS”) hereby submits its Response to the Motion Requesting Review of USF Issues of the South Carolina Cable Television Association, CompSouth, tw telecom of south carolina llc, and Nuvox Communications, Incorporated (“CLECs”).

On April 3, 2007, ORS identified certain issues for discussion and clarification in response to Order No. 2007-263. The Commission then sought comments on the issue of cost methodology and four administrative issues raised by ORS. (See Order No. 2007-422). On May 23, 2008, the Commission issued a Notice of Hearing to update the methodology for performing cost studies.

The CLECs request that the Commission revise its notice of hearing in this docket to review additional issues relating to the operation of the USF. The CLECs allege that the “USF is not currently in compliance with this Commission’s orders or the South Carolina and federal statutory provisions governing the operation of the USF” and “is not currently being operated in a way that is consistent with applicable legal requirements.” (CLEC Response at pages 4 and 8). The CLECs also allege that companies contributing to the USF are being over-charged. (CLEC

Response at page 6). For the reasons set forth below and in its position as the Fund Administrator, ORS denies each and every allegation that the State USF is not being operated or managed consistent with the Commission Orders and guidelines.

The CLECs state (1) that the ILECs are receiving subsidies from the USF for unregulated services; (2) that the ILECs are not filing the reports required by Order No. 2001-954 and thus companies paying into the USF are over-charged; (3) that Wireless ETCs are not paying into the fund; and (4) that without required reporting of implicit support received by ILECs from other services, there is the potential for over-recovery from the USF.

First, the issue of whether lines receiving support are sold as part of a contract or bundled offering is not a matter previously addressed by this Commission. However, assuming *arguendo* that these lines are excluded the fact remains that the State USF is currently based on lost revenue, a fact recognized by the Legislative Audit Council (“LAC”) in its 2005 report. (See LAC Review of the SC USF Dated February 2005 at page 19). Simply excluding lines that are associated with a bundle, with no other changes to the calculation, will not alter the amount of disbursement unless or until the amount of revenue replacement approved by company is altered or a company files a request for additional funding.

Second, the CLECs’ contention that the Incumbent Local Exchange Carriers (“ILECs”) are not filing the reports required by Order No. 2001-954 is false. ORS is receiving the required reports and to the extent an ILEC has failed to timely file the report, ORS has taken action. Contrary to the assertion that the Fund Administrator is using “line counts from years ago” ORS uses the line counts reported each year. The recent LAC report reflects that ORS, as the Fund Administrator, is performing those functions in compliance with Commission orders and guidelines. Additionally, ORS incorporated those changes recommended by the LAC. (See LAC

Review of the SC USF Dated June 2007 at page 2). Furthermore, an independent auditor annually reviews ORS's performance as the Fund Administrator and that report has been filed with the Commission. The Fund's independent auditors have issued opinions for each year in which ORS served as Fund Administrator which state that financial statements for those years "present fairly, in all material respects, the financial position of the fund ... and the results of its operations...." (See McElveen Report at page 1).

The real issue of contention is whether funding should be based on loss of revenue as determined in the carrier of last resort's cost study or based on a per line basis. ORS identified this issue for discussion and clarification in its workshop comments filed with the Commission on April 3, 2007. (See Issue No. 6). It was argued that given the pendency of the appeals, this issue, among others, should not be taken up by the Commission pending a ruling on those appeals. With the South Carolina Supreme Court's ruling in Office of Regulatory Staff v. South Carolina Public Service Commission, et al, 374 S.C. 46, 647 S.E. 2d 223 (2007), the Court affirmed Commission Order Nos. 97-753, 98-322, and 2001-419 implementing the State USF.

Third, the CLECs contend that the Wireless ETCs<sup>1</sup> are required by Order 2001-419 to contribute to the State USF upon approval of their request for ETC status. S.C. Code Ann. § 58-9-280(E)(3) (Supp. 2007), provides that the Commission shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing the Commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State. ORS has notified the wireless companies recently granted ETC status of the Commission's Order 2001-419 and forwarded to them the contribution worksheets.

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<sup>1</sup> Hargray Wireless, FTC Wireless and HTC Communications, referred to collectively as (the "Wireless ETCs"), each received approval for eligible telecommunications carrier ("ETC") status.

However, ORS also recognizes that the Commission's Orders granting wireless carriers ETC status did not expressly find that the wireless carriers *are providing* radio-based local exchange services in competition with a local telecommunications service. Because the granting of ETC approval was based on the "offer" to provide these services but not upon the actual provision of such service prior to certification, there was no finding that the radio-services are in fact in competition with the local telecommunications service. (See Order No. 2007-805 at pages 3, 9, and 21 and Order No. 2007-804 at page 3 "it now offers, or will offer upon designation as an ETC" and at page 6 "has committed to offer"). The Wireless ETCs may, pursuant to Section 58-9-280(E)(3), seek the opportunity for a hearing.

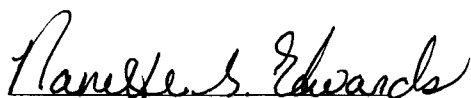
Fourth, the CLECs argue that without required reporting of implicit support received by ILECs from other services, there is the potential for over-recovery from the USF. Currently, there is no such report required by Commission order and there is no state or federal statutory requirement for such a report. The amount of support was established by Commission orders which were ultimately upheld by the South Carolina Supreme Court. See Office of Regulatory Staff v. South Carolina Public Service Commission, et al, 374 S.C. 46, 647 S.E. 2d 223 (2007).

ORS vigorously denies any and all allegations that the State USF fund is not operating pursuant to existing Commission orders and guidelines interpreting federal and state statutory universal service fund provisions. To the extent the Commission decides to address additional USF issues or USF issues previously raised and pending, it is ORS's position that such a review is to contemplate prospective changes to the administration and management of the fund.

WHEREFORE, for the reasons set forth above and in its Reply, ORS denies that the operation and management of the State USF is not in compliance with Commission Orders and

guidelines and requests that the Commission deny the CLEC's Motion to revise the Notice of Hearing.

Respectfully submitted,

A handwritten signature in cursive script, reading "Nanette S. Edwards".

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July 11, 2008  
Columbia, SC

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 1997-239-C**

IN RE:	)	
Proceeding to Establish Guidelines for an Intrastate	)	<b>CERTIFICATE OF</b>
Universal Service Fund (USF)	)	<b>SERVICE</b>
	)	

This is to certify that I, Chrystal L. Morgan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **RESPONSE TO MOTION** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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July 11, 2008  
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